

Amending an Education Health and Care plan (EHCP)

Amending an EHC plan following a review

When the LA is considering amending an EHCP following a review (or at any other time other than following a re-assessment) the first step in the process is to send the child's parent or the young person a copy of the existing EHCP plus the draft amended plan (showing which sections have been amended), with copies of any evidence which supports those amendments

The parents or the young person must be given at least 15 days to make representations about the contents and to request that a particular school or other institution be named in the EHCP.

This means that the LA, having started the process, can still decide not to amend the EHCP. This is unlikely to happen, but it is possible. The Regulations do not explicitly require the LA to inform parents or young people of their right of appeal in this circumstance, but it is plain that the right exists by section 51(2)(e) of the Act, which allows an appeal against a:

“decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44”.

When should an EHCP be amended?

An amendment to an existing Education, Health and Care (EHC) Plan should usually occur after an annual review when there are significant changes identified to the current EHC Plan.

Education, Health and Care Plans will always be amended in preparation for a child/ young person moving onto their next phase of education (e.g. Nursery into Reception, (KS1 – KS2), KS2 – KS3, KS3-4, post-16), subject to the EHC Plan remaining appropriate, which should be discussed at the annual review meeting.

The EHC Plan may be amended at other times, e.g. a change of needs, following a change of address or school, or where there are changes in health or social care provision resulting from minor or specific changes in the child or young person's circumstances.

The Code of Practice states that EHC Plans are not expected to be amended on a very frequent basis

Notice of Proposed Changes to the EHC Plan

These will be listed in the table on the front page of the EHCP which highlights which sections have been amended.

Phase Transfer/Key Stage transfer

The expression 'Phase Transfer' or 'Key Stage Transfer' means when a child or young person is moving between phases of education.

It is a defined term in the SEN Regs as:

“transfer between phases of education” means a transfer from: (a) relevant early years education to school; (b) infant school to junior school; (c) primary school to middle school, (d) primary school to secondary school; (e) middle school to secondary school; or (f) secondary school to a post-16 institution”.

Where a child or young person is within 12 months of a transfer between phases of education the local authority must review and amend the EHCP. This will be, at the very least, to name the school, post-16 or other institution, or type of school or institution, which the child or young person will attend following that transfer. The LA must issue the child or young person's finalised EHCP before:

- 31st March in the case of a transfer from secondary school to a post 16 institution.
- 15th February in the case of a child's transfer in any other case.

In order for an EHCP to be reviewed and amended by the 15 February in a calendar year (in the case of a child), the annual review process must first take place, followed by the procedure for finalising the amended EHC plan once a proposal is issued.

Therefore, for children who are going into phase transfer, it is likely that the annual review meeting will need to be called in the autumn term at the beginning of the child's last academic year in the setting they are leaving to enable these statutory time limits to be met.

Transfer of EHCPs or change of responsible commissioning body (moving LA)

- SEN Reg 15 deals with what happens when a child or young person with an EHCP moves into a different LA. The obligation to maintain the EHCP will transfer to the new LA on the day of the move or within 15 working days of the new LA becoming aware of the move, if later.
- Following the move to live in Cumberland, an amendment to the Education, Health and Care (EHC) Plan issued by the previous local authority will be required. This will update the EHC Plan to be in the Cumberland Council format and reflect the current educational placement or future placement (if appropriate).

Ceasing to maintain an EHCP

The LA may issue a notice to cease to maintain an EHC plan at any time.

The SEN Regs provide for a two stage process:

- 1) when a local authority is considering ceasing to maintain an EHCP it must inform the child's parent or the young person and consult them as well as the head teacher or principal and
- 2) having carried out that consultation, if the LA decides to cease to maintain the EHC plan it must then notify the child's parent or young person, the institution named and the responsible commissioning body.

The cease to maintain notice must include the right of appeal and the time limits. If the parent or young person does not appeal, the EHCP will remain in place until the end of the time limit in which an appeal can be made and then come to an end. If the parent or young person does appeal, the EHCP will remain in place and must continue to be implemented until the appeal is decided by the Tribunal.

Dropping out of a course or out of Education or training

If a young person drops out of a course, the LA is not relieved of responsibility for them until they have conducted a review of their EHC plan and found out whether the young person wants to carry on in education or training (possibly with more support or on a different course) (SEN Reg 30 and the Code, paragraph 9.203).

Where a child or young person with an EHC plan under 18 is not receiving education or training, under SEN Reg 29(2) the LA must:

- conduct a compulsory review of the EHC plan in accordance with SEN Regs 18 and 19; and
- amend the EHC plan to ensure that the young person continues to receive education or training.

In other words, for young people under 18 the LA cannot cease to maintain the EHCP because the young person is for some reason out of school or college.

The LA determines that the EHCP is no longer necessary:

Section 45(2) of the Act gives an example of a circumstance in which it would no longer be necessary for an EHC plan to be maintained:

Section 45(2) The circumstances in which it is no longer necessary for an EHCP to be maintained for a child or young person include where the child or young person no longer requires the special educational provision specified in the plan.

Section 45(3) says that when the LA is determining that special educational provision is no longer required for a young person over 18, the LA must have regard to whether the educational or training outcomes in the EHCP have been achieved. Note that they cannot cease to maintain the EHCP only because the outcomes have been achieved. In some cases, the outcomes may be out of date, or not have been ambitious enough, and so despite having achieved them the young person wishes to continue with education and continues to require special educational provision to be made through an EHCP. The requirement under section 45(3) is just that the LA has regard to whether they have been achieved.